

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD L. AHEARN, Regional Director of the
Nineteenth Region of the National Labor
Relations Board, for and on behalf of the
NATIONAL LABOR RELATIONS BOARD

) Civil No. 3:11-CV-05684 -RBL

Petitioner

v.

INTERNATIONAL LONGSHORE and WAREHOUSE
UNION, LOCAL 21

Respondent

and

INTERNATIONAL LONGSHORE and WAREHOUSE
UNION, LOCAL 4

Respondent

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1 (PROPOSED) FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR CONTEMPT

2 Based on the verified Petition of Richard L. Ahearn ("Petitioner"), Regional Director of
3 Region 19 of the National Labor Relations Board (the "Board"), for a temporary restraining order
4 and preliminary injunction pursuant to Sections 10(j) and (l) of the National Labor Relations Act
5 (the "Act"), as amended, 29 U.S.C. §§ 160(j) and (l), this Court, by the undersigned, issued a
6 Temporary Restraining Order ("Restraining Order") on September 1, 2011. This cause came to
7 be heard on September 15, 2011, due to allegations of civil contempt of that Restraining Order.

8 The Court, upon consideration of the pleadings, evidence, briefs, arguments of counsel
9 and the entire record in this case, makes the following:

10 **FINDINGS OF FACT**

11 1. On August 31, 2011, Petitioner initiated proceedings in the Western District of
12 Washington seeking both temporary and preliminary injunctive relief against Respondents
13 International Longshore and Warehouse Union Locals 21 and 4 ("Respondents") pursuant to
14 §§ 160(j) and (l) of the Act due to Respondent's having engaged in a litany of unlawful strike line
15 misconduct with improper object, including mass protesting, trespassing, violence, threats of
16 violence, and property damage to EGT, including blocking of railroad tracks so that trains could
17 not make deliveries to EGT's facility at the Port of Longview, Washington. [Document Nos. 1-
18 16].

19 2. On September 1, 2011, this Court, by the undersigned, Judge Ronald B.
20 Leighton, issued a Temporary Restraining Order (the "Restraining Order"), granting, in
21 substantive part, that portion of the Petition under §§ 10(j) and (l) of the Act. [Docket No. 28].

22 3. As set forth in the Restraining Order, Respondents, their officers, agents,
23 servants, employees, attorneys, and all members and persons acting in concert or participation
24 with them, from the date of the Restraining Order until the issuance of a Preliminary Injunction on
25 September 8, 2011, were enjoined and restrained from "[e]ngaging with an unlawful object, *inter*

1 *alia*, in picket line violence, threats and property damage, mass picketing and blocking of ingress
2 and egress at the facility of EGT, LLC, located in Longview, Washington, in furtherance of
3 Respondents dispute regarding work performed at or related to the EGT facility; and from
4 "furthering their unlawful object by restraining or coercing the employees of EGT, General
5 Construction, or any other person doing business in relations to the EGT facility in the exercise of
6 their rights guaranteed under Section 7 of the Act" by any other means. [Document No. 58].

7 4. Despite the issuance of the Restraining Order, and the clear mandate of this
8 Court that the trains serving the EGT facility were not to be held hostage, Respondents engaged
9 in further strike line misconduct.

10 5. At approximately 6:45 am on or about September 7, 2011, officers and agents of
11 Respondents, acting in concert with the International Longshore and Warehouse Union and its
12 president Robert McEllrath, engaged in a mass protest, culminating in several hundred persons'
13 participation, in Vancouver, Washington. Respondents and those acting in concert with them,
14 while wearing insignia and carrying signs identifying Respondents, blocked the tracks and
15 prevented the passage of a Burlington Northern Santa Fe ("BNSF") train scheduled to deliver
16 corn to the EGT facility at the Port of Longview. Said blockage forced not only prevented
17 passage of the EGT-bound BNSF train, but also forced the delay of others by other carriers as
18 well. After several hours, although Respondents and those acting in concert with them permitted
19 the other trains to proceed, they did not permit the EGT-bound train to proceed. It was not until
20 approximately 6 hours later that Respondents and those acting in concert with them dispersed,
21 clearing the tracks and allowing the EGT-bound train to get underway at approximately 1:45 pm.

22 6. Approximately 1¼ hours later, at 3 pm on September 7, 2011, officers and
23 agents of Respondents (including Shelly Porter, Byron Jacobs, and Rick Anderson), acting in
24 concert with the International Longshore and Warehouse Union and its president Robert
25 McEllrath, while wearing insignia and carrying signs identifying Respondents, trespassed and

1 engaged in a second mass protest in Longview, Washington, again blocking the tracks and
 2 preventing the passage of the previously detained BNSF train attempting to deliver corn to the
 3 EGT facility. When local law enforcement officials attempted to enforce the Restraining Order
 4 and disperse Respondents and those acting in concert with them, they were met with abusive
 5 and disorderly conduct, including from International President McElrath. In addition, threats
 6 were made to security personnel, including "just you [expletive] wait!"

7 7. Approximately 15-20 of Respondents and those acting in concert with them
 8 were arrested and taken into custody after the others finally disbursed at approximately 6 pm by
 9 law enforcement personnel and the train tracks cleared. International President McElrath,
 10 however, threatened "we will be back," at that time. Approximately one hour later, at 7 pm on
 11 September 7, 2011, when the train began to move, heading into the EGT facility, Respondents
 12 and those acting in concert with them were heard to threaten, "we're making plans."

13 8. On September 8, 2011, at approximately 4:00 am, over 100 cars entered the
 14 area around the EGT facility in a continuous, organized flow. Once in the area, Respondents,
 15 acting in concert with the International Longshore and Warehouse Union and its president Robert
 16 McElrath, engaged in a mass protest at the EGT facility while armed with gardening shears,
 17 baseball bats, broken broom sticks, and metal pipes. They also engaged the following conduct:

18 (a) Threatening with bodily harm and throwing rocks at security guards
 19 employed by Columbia Security, a contractor for EGT;

20 (b) Threatening local enforcement personnel with bodily harm if they
 21 interfered with the mass protest;

22 (c) Breaking and attempting to break windows on buildings at the EGT
 23 facility;

24 (d) Stealing and driving a vehicle belonging to Columbia Security and
 25 driving the vehicle into a drainage ditch, damaging the front portion of the vehicle;

1 (e) Opening the loading and unloading doors of the BNSF corn train parked
2 at the EGT facility and dumping the corn load on the ground;

3 (f) Cutting, severing or disconnecting the air hoses connecting the cars of
4 the BNSF train parked at the EGT facility;

5 (g) Disconnecting, damaging and breaking the metal couplings connecting
6 the cars of the BNSF train parked at the EGT facility;

7 (h) Breaking and otherwise damaging overhead lights related to the
8 conveyor system at the EGT facility; and

9 (i) Damaging and knocking down portions of the fence line surrounding the
10 EGT facility.

11 9. Security personnel and local law enforcement officials have been threatened
12 and outnumbered, unable to contain Respondents and those acting in concert with them during
13 these activities.

14 10. The § 10(j) portion of the Preliminary Injunction requested by Petitioner in this
15 matter was granted by this Court at approximately 2:45 pm on September 8, 2011. [Docket No.
16 58].

17 11. Due to the conduct described above in paragraphs 5 through 9, on September
18 8, 2011 Petitioner asked this Court to find Respondents in contempt of the Restraining Order

19 12. A hearing was held before this Court on September 15, 2011 to hear testimony,
20 arguments by the parties and to adjudge whether Respondents were in contempt of the
21 Restraining Order.

22 13. During that hearing, Respondents' counsel represented and was prepared to
23 stipulate that Respondents were responsible for the actions taken in blocking the train in both
24 Vancouver and Longview on September 7, 2011. [Tr. 14]. There has been no such affirmation
25 as to the conduct on September 8, 2011. There has been no evidence adduced that any official

1 of Respondents or those acting in concert with them, including the International, have disavowed
 2 any of the conduct engaged in on either day or that reasonable steps had been taken to secure
 3 compliance with the Restraining Order. Rather, Local 21 has posted on its "Facebook" page
 4 pictures of the September 7 mass picketing and blocking of the BSNF train. Further, Counsel for
 5 Respondents could make no representation to this Court that such conduct violative of the
 6 Restraining Order or, now, the Preliminary Injunction, would cease. [Tr. p.116, 117].

7 CONCLUSIONS OF LAW

8 1. This Court has jurisdiction of the parties and of the subject matter of these
 9 proceedings, and under 29 U.S.C. §§ 160(j) and (l), is empowered to grant injunctive relief.

10 2. This Court, upon a showing of clear and convincing evidence, has the authority
 11 to find parties in civil contempt of its injunctions issued on matters brought pursuant to §§ 160(j)
 12 and (l) of the Act. *Hoffman v. ILWU, Local 10*, 492 F. 2d 929 (9th Cir. 1974), *cert. granted sub*
 13 *nom. on other grounds and affirmed, Muniz v. Hoffman*, 422 U.S. 454 (1975), *citing Madden v.*
 14 *Grain Elevator, Flour & Feed Mill Workers*, 334 F.2d 1014, 1020 (7th Cir. 1974), *cert. denied*, 379
 15 U.S. 967 (1965).

16 3. This Court may find Respondents responsible for picket line misconduct if
 17 Respondents approved the misconduct, participated actively, or knowingly tolerated it. *United*
 18 *Mine Workers v. Gibbs*, 383 U.S. 715, 739 (1966). *See, e.g., Soft Drink Workers Union Local*
 19 *812*, 304 NLRB 111 (1991) (when union actually or implicitly authorized the conduct before or
 20 after it happened, it is responsible for misconduct); *Teamsters Local 860*, 229 NLRB 993, 994
 21 (1977) (same). Their "responsibility for acts by [their] officers and members is controlled by
 22 common-law agency principles; therefore implied or apparent authority is sufficient to establish
 23 agency." *NLRB v. Advanced Sys., Inc.*, 681 F.2d 570, 576 (9th Cir. 1982). Further, where there
 24 is a pattern of misconduct, the union is liable absent affirmative steps to end the misconduct.
 25 *Dover Corp.*, 211 NLRB 955, 956-59 (1974), *enforced*, 535 F.2d 1205 (10th Cir. 1976).

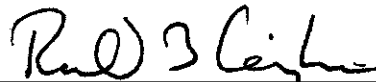
1 4. There is, and the Court has, reasonable cause to believe by the presentation of
2 clear, cogent and convincing evidence at the hearing on September 15, 2011, that Respondents,
3 acting in concert with the International Longshore and Warehouse Union by the conduct of its
4 president, are responsible for and have themselves violated the terms of the Restraining Order
5 by engaging in mass picketing, physical threats, property damage and blocking of ingress of the
6 BNSF train at Vancouver and Longview scheduled to deliver corn to the EGT facility at the Port
7 of Longview.

8 5. On September 15, 2011, this Court issued an Order adjudicating Respondents
9 and the International Longshore and Warehouse Union to be in civil contempt of the Restraining
10 Order. [Document No. 73].

11 6. Having found Respondents and the International to be in contempt of the
12 Restraining Order, this Court shall, after a hearing on September 30, award compensatory
13 damages for the harm caused on September 7 and 8, 2011, and impose a prospective fine
14 schedule to compel future compliance with the preliminary injunction as is permitted by
15 precedent. *International Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 827 (1994) (fines
16 to compel future compliance appropriate); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45 (1991)
17 (compensatory damages include attorneys' fees); *Fleischmann Distilling Corp. v. Maier Brewing*
18 *Co.*, 386 U.S. 714, 718 (1967) (compensatory damages include attorneys' fees); *United Mine*
19 *Workers*, 330 U.S. at 304 (compensatory damages); *Cunningham v. Weston*, 180 Fed. Appx.
20 644, 648 (9th Cir. 2006) (compensatory damages); *NLRB v. Ironworkers Local 433*, 169 F.3d
21 1217, 1218, 1221 (9th Cir. 1999) (enforcement of prospective non-compliance fine for alleged
22 violations does not trigger need for criminal procedural safeguards if fines are prompted by a
23

1 party's previous failure to adhere to a court order); *Richmark Corp. v. Timber Falling Consultants*,
2 959 F.2d 1468, 1482 (9th Cir. 1992) (coercive fines payable to the Court).

3 DATED this 30th day of September 2011.

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5
6 UNITED STATES DISTRICT JUDGE
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9 Presented by:

10
11 /s/ Anne Pomerantz

12 /s/ Daniel Sanders

13 /s/ John Fawley

14 /s/ Helena Fiorianti

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